

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

REDAPT INC.,

Plaintiff,

v.

PETER PARKER,

Defendant.

CASE NO. 2:20-cv-00862-JRC

ORDER GRANTING MOTION  
FOR TEMPORARY RESTRAINING  
ORDER

Plaintiff Redapt, Inc. (“Redapt”), a technology services business, brings suit against defendant Peter Parker (“Parker”), a former employee, under federal law for allegedly copying Redapt’s customer relations management (“CRM”) database without authorization before Parker resigned his employment with Redapt.

Before the Court is Redapt’s motion for a temporary restraining order (“TRO”) against Parker on the basis that Parker intends to disclose Redapt’s CRM database to a competitor in direct violation of a non-disclosure agreement in Parker’s employment contract. Among other

1 things, Redapt seeks an order restraining Parker from using or disclosing this confidential  
2 information.

3 The Court grants the TRO with the revisions set forth in this Order. Parker is enjoined  
4 from using or disclosing confidential information belonging to Redapt, as discussed herein, and  
5 shall preserve all documents, devices, and materials relevant to the allegations in the Complaint.  
6 The Order also applies to Parker's agents, servants, employee, attorneys, and other persons who  
7 may be in active concert or participating with him in relation to the subject matter of this Order  
8 and who receive actual notice of this order. The TRO will expire fourteen days from the date  
9 that this Order is entered. Parker is further ordered to show cause why a preliminary injunction  
10 should not issue. A hearing on the request for a preliminary injunction is set for March 22, 2020.

## 11 12 **BACKGROUND**

### 13 **I. Underlying Events<sup>1</sup>**

14 According to Brent Malmstrom (Redapt's Chief Financial Officer and Chief Operating  
15 Officer), in 2018, Redapt, which specializes in providing resources to build data center  
16 infrastructure and in implementing cloud computing solutions, purchased assets of another  
17 cloud-based service provider in order to expand Redapt's business. Dkt. 5, at 1–2. This included  
18 purchase of the CRM database, which, by 2020, contained “eight years of highly valuable, highly  
19 confidential trade secret information regarding Redapt's customers and projects”—information  
20 valued at tens of millions of dollars. Dkt. 5, at 2.

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<sup>1</sup> The account of events in this subsection is taken from affidavits and documents  
provided in support of Redapt's request for a TRO.

1 Parker and three majority owners of the purchased company began working for Redapt.  
2 Dkt. 5, at 2. Parker lead the “cloud-based services technical team providing cloud-based services  
3 to Redapt’s clients” and was “one of a few Redapt employees who had administrative rights to  
4 the CRM database.” Dkt. 5, at 3. As such, he executed an agreement with Redapt not to disclose  
5 their confidential information during or after employment and not to work for Redapt  
6 competitors or solicit Redapt customers after employment. Dkt. 5, at 3–4; *see also* Dkt. 5-2, at  
7 1–2.

8 In April 2020, Redapt terminated the former majority owners and on May 12, Parker sent  
9 Malmstrom and Redapt’s owners a “strongly worded email” that “acknowledged his intent and  
10 desire to end his relationship with Redapt.” Dkt. 5, at 4; *see also* Dkt. 5-3, at 1. Malmstrom  
11 states that he later learned that at the time, Parker was meeting with a competitor of Redapt—a  
12 competitor who had previously hired a former Redapt employee. Dkt. 5, at 5–6. Malmstrom  
13 scheduled a May 20 meeting with Parker, at which Parker resigned. Dkt. 5, at 5–6.

14 Redapt’s IT manager, Jason Morgan, then learned that on May 17, Parker had accessed  
15 the CRM database and downloaded a copy without returning the copy and with the audit  
16 function of the database disabled, meaning that detection of the activities was prevented. Dkt. 5,  
17 at 5; Dkt. 6, at 2. According to Morgan, “[a] copy of the database had clearly been exported  
18 from Redapt’s systems.” Dkt. 6, at 2. According to Redapt’s attorney Marcia Ellsworth, Parker  
19 later provided conflicting accounts of why he had downloaded and copied the CRM database and  
20 provided no explanation of why the audit feature was disabled. Dkt. 5, at 6–7; Dkt. 6, at 3; Dkt.  
21 7-3, at 1.

22 Attorney Ellsworth then requested that Parker turn over his computer for imaging by  
23 Redapt’s expert, which Parker refused to do under circumstances acceptable to Redapt. Dkt. 7,  
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1 at 2. Specifically, Parker requested that a neutral third-party expert inspect the computer and that  
2 Redapt provide a list in advance of specific items to be searched for based on the agreement of  
3 the parties. Dkt. 7-7. On June 5, 2020, Malmstrom learned that Parker had scheduled another  
4 meeting with the competitor, and Redapt sent a cease and desist letter. Dkt. 5, at 7.

## 5 **II. Complaint and TRO**

6 On the same day, June 5, 2020, Redapt brought suit in this Court against Parker, seeking  
7 injunctive relief and damages. *See* Dkt. 1. Redapt alleges violation of the federal Defend Trade  
8 Secrets Act (“DTSA”), 18 U.S.C. § 1836, as well as state law claims for misappropriation of  
9 confidential information (ch. 19.108 RCW), breach of duty of loyalty and confidential  
10 relationship, conversion, and breach of contract. *See generally* Dkt. 1.

11 On June 9, 2020, Redapt filed a motion for a TRO. *See* Dkt. 4. Redapt’s counsel has  
12 since filed an affidavit explaining the efforts that Redapt has made to provide notice of the TRO  
13 to Parker. First, Redapt’s counsel emailed notice of the TRO to an attorney who he believed  
14 represented Parker. *See* Dkt. 13, at 2. She informed Redapt that she was no longer representing  
15 Parker. *See* Dkt. 13, at 2. That same day, June 9, 2020, Redapt’s counsel sent the TRO motion  
16 directly to Parker’s email address. Dkt. 13, at 2. The next day, Redapt’s counsel arranged for a  
17 process server to serve Parker at his home, but, despite making two attempts, the process server  
18 was unable to serve Parker. Dkt. 13, at 2–3.

19 By referral from this Court, Magistrate Judge J. Richard Creatura held a telephonic  
20 hearing in this matter on June 11, 2010, in which Redapt’s counsel participated. Dkt. 16. At the  
21 hearing, Redapt’s counsel cited the unsuccessful efforts to serve Parker with the TRO and  
22 indicated that Redapt now seeks entry of an *ex parte* TRO as authorized by Federal Rule of Civil  
23 Procedure 65(b).  
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### III. TRO Relief Requested and Supporting Documents

In the Motion for TRO, Redapt requests that Parker be enjoined from disclosing or using Redapt’s “confidential information and trade secrets” and that Parker be required to—

immediately deliver to [Redapt’s] counsel or to the Court, or to make available for pickup, as the Court may deem appropriate, the work computer or other electronic device used to access Redapt’s database and to communicate with Redapt’s former employees and competitors . . . as well as all of Parker’s external storage devices, handheld devices, together with access passwords for each such device, if protected, to allow such devices to be imaged by third party expert witness Allison Goodman of eDiscovery, Inc. (“eDiscovery”) to preserve evidence, to determine whether Parker has further distributed Redapt’s confidential information and trade secrets, to identify appropriate third parties to be brought into this action, and to avoid further use and disclosure of such information, and requiring such computers to be returned to Parker within 1 business day thereafter, scrubbed of Redapt’s confidential information and data

Dkt. 5, at 2–3.

Redapt further requests that Parker and non-parties to this action be required to preserve evidence and that Parker be required to show cause why a preliminary injunction should not issue. Dkt. 5, at 3.

In support of its motion, Redapt has provided declarations from Malmstrom (the Chief Financial Officer and Chief Operating Officer of Redapt), Jason Morgan (the Redapt IT director), Marcia Ellsworth (a Redapt attorney), and Allison Goodman, Redapt’s imaging expert. *See* Dkts. 5–9.

## DISCUSSION

### I. TRO Procedure

The Court by local rule disfavors TROs without notice and an opportunity to be heard by the adverse party. *See* Local Civil Rule (“LCR”) 65(b)(1). Nonetheless, an *ex parte* TRO may be issued—without waiting for a response from the opposing party—if the conditions set forth in Federal Rule of Civil Procedure 65(b) are satisfied. Those conditions are that “specific facts in

1 an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss or  
2 damage will result to the movant before the adverse party can be heard in opposition; and . . . the  
3 movant's attorney certifies in writing any efforts made to give notice and the reasons why it  
4 should not be required." Fed. R. Civ. P. 65(b)(1).

5 Here, Redapt has presented persuasive evidence that irreparable injury will occur before a  
6 chance for an opposition because Parker copied their confidential information before terminating  
7 his employment with Redapt, then scheduled a meeting with top executives of Redapt's  
8 competitor for June 5. *See* Dkt. 5, at 8 (Malmstrom declaration). Thus, there is reason to believe  
9 that Parker has already or will imminently transfer the CRM database to Redapt's competitors, in  
10 violation of the terms of his employment agreement. Dkt. 5, at 8. Moreover, the evidence shows  
11 that Parker has "computer expertise" and has lied about his reasons for copying the database, so  
12 that he may destroy data, unless the Court enters a restraining order. Dkt. 5, at 8.

13 Redapt's attorney has also certified in writing efforts made to give notice. *See* Dkts. 9,  
14 11, 13, 14. At the hearing before Magistrate Judge Creatura, Redapt's counsel made clear that it  
15 believes that Parker is avoiding service, since despite failing to respond to the email, there is  
16 evidence that Parker has accessed the internet in the last few days. *See also* Dkt. 14.

17 The Court finds that Redapt has adequately shown that *ex parte* consideration of the  
18 motion for TRO is appropriate, without waiting for Parker to file an opposition.

## 19 II. TRO Legal Standards

20 "A plaintiff seeking a TRO in federal court must meet the standards for issuing a  
21 preliminary injunction." *Navigant Consulting, Inc. v. Milliman, Inc.*, No. C18-1154JLR, 2018  
22 WL 3751983, at \*3 (W.D. Wash. Aug. 8, 2018) (citing *Stuhlbarg Int'l Sales Co. v. John D.*  
23 *Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)). A plaintiff seeking a preliminary  
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injunction must establish (1) a likelihood of success on the merits, (2) a likelihood of suffering irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in the plaintiff's favor, and (4) that an injunction is in the public interest. *Winter v. Nat'l Res. Def. Council*, 555 U.S. 7, 20 (2008). The balance of equities and public interests factors merge when the Government is a party. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

A plaintiff may also obtain a preliminary injunction by showing "serious questions going to the merits were raised" (a lesser standard than a likelihood of success) and that "the balance of hardships tips *sharply* in [plaintiff's] favor," if the other elements of the *Winter* test are met. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131, 1135 (2011) (internal quotation omitted and emphasis added). However, a preliminary injunction always requires more than a mere possibility of irreparable harm because a preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22.

### III. TRO Analysis

#### A. Likelihood of Success on the Merits

Redapt asserts a likelihood of success on the merits of its claims of violation of the DTSA, violation of state law protecting trade secrets, and breach of contract. Dkt. 4, at 12–16.

The DTSA creates a private cause of action in federal court for trade secret misappropriation. *See* 18 U.S.C. § 1836(b)(1). The trade secret must be "related to a product or service used in, or intended for use in, interstate or foreign commerce." 18 U.S.C. § 1836(b)(1). The DTSA is violated if, among other things, someone "with intent to convert a trade secret" "to the economic benefit of anyone other than the owner thereof, and intending or knowing that the

1 offense will, injure any owner of that trade secret, knowingly” “without authorization copies,  
2 duplicates, sketches, draws, photographs, downloads, uploads, alters, destroys, photocopies,  
3 replicates, transmits, delivers, sends, mails, communicates, or conveys such information[.]” 18  
4 U.S.C.A. § 1832(a)(2).

5 Similarly, under Washington state law, a trade secret is “misappropriated” if it is acquired  
6 “by a person who knows or has reason to know that the trade secret was acquired by improper  
7 means.” RCW 19.108.010(2). Improper means “includes theft.” RCW 19.108.010(1). “The  
8 Washington Supreme Court has held that customer contact information, whether retained only in  
9 an employee’s memory or in a compilation of notes or business cards, can constitute a trade  
10 secret.” *Pac. Aerospace & Elecs., Inc. v. Taylor*, 295 F. Supp. 2d 1188, 1200 (E.D. Wash. 2003)  
11 (citing *Nowogroski Ins., Inc. v. Rucker*, 137 Wn.2d 427, 437, 440 (1999)).

12 Here, Redapt has provided affidavits and evidence in support of its motion from which it  
13 appears that Parker accessed and copied the CRM with an illicit motive, intending to use the  
14 CRM, which is valuable, to his own ends; that such would be harmful to Redapt’s business; and  
15 that the CRM pertains to interstate services. “Customer information such as sales history and  
16 customer needs and preferences constitute trade secrets.” *Henry Schein, Inc. v. Cook*, 191 F.  
17 Supp. 3d 1072, 1077 (N.D. Cal. 2016) (citing *MAI Sys. Corp. v. Peak Computer, Inc.*, 991 F.2d  
18 511, 521 (9th Cir. 1993)). Moreover, Redapt has provided evidence from which it could be  
19 determined that Parker stole the customer database in violation of the Washington law against  
20 trade secret misappropriation. The timing of Parker’s actions, including setting up meetings with  
21 Redapt’s competitor, is strong circumstantial evidence that Parker copied the CRM database with  
22 the intent to offer confidential information to Redapt’s competitors. It should also be noted that  
23 Redapt has provided evidence that it has already lost at least one employee to the competitor  
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1 with whom Parker was meeting and that Redapt has sent a cease-and-desist letter to the  
2 competitor to stop recruiting former Redapt employees who have restrictive covenants in their  
3 employment agreements. *See* Dkt. 5, at 5–6.

4 Redapt has also provided a contract signed by Parker in which he agreed not to “at any  
5 time directly or indirectly . . . during the term of this Agreement or after termination of this  
6 Agreement for any reason . . . use Confidential Information [including customer lists] of the  
7 Company . . . for Employee’s own benefit or that of any other person or entity; or . . . disclose  
8 Confidential Information of the Company or any Affiliated Entity to any person or entity without  
9 the express prior written consent of the Company.” Dkt. 5-2, at 1–2. This supports Redapt’s  
10 claim that Parker’s attempts to share the CRM database would breach his contract with Redapt.

11 Based on the evidence submitted by Redapt in support of its TRO, therefore, the Court  
12 finds that there is a likelihood of success on the merits. *Accord Henry Schein, Inc.*, 191 F. Supp.  
13 3d at 1077 (“Plaintiff has alleged that Defendant e-mailed and downloaded, to her personal  
14 devices, confidential information from HSI before leaving her employment to work at a  
15 competitor. It has also provided copies of a Confidential and Non-Solicitation Agreement and a  
16 Letter Agreement with provisions for confidentiality and non-solicitation, both of which appear  
17 to be signed by Cook. . . . In light of these contentions, the Court concludes that Plaintiff is  
18 likely to succeed on the merits.”); *see also Navigant Consulting, Inc.*, 2018 WL 3751983, at \*4.

#### 19 **B. Likelihood of Irreparable Harm in the Absence of Injunctive Relief**

20 Redapt asserts that it faces a likelihood of irreparable harm from Parker’s possession of  
21 its proprietary information since there is a likelihood that Parker will use that information,  
22 including providing it to a competitor, which will result in “losing clients, profit margin, revenue,  
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1 and Parker's (and likely [the competitor's]) unlawful possession of Redapt's proprietary  
 2 information." Dkt. 4, at 16.

3 "[E]vidence of threatened loss of prospective customers or goodwill certainly supports a  
 4 finding of the possibility of irreparable harm.'" *Henry Schein, Inc.*, 191 F. Supp. 3d at 1077  
 5 (quoting *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001)).  
 6 Such harms would also be irreparable: the proverbial cat is out of the bag once Parker gives the  
 7 proprietary customer information to a competitor, an event that is not unlikely to happen before  
 8 Parker can be heard in opposition. *Accord Schein*, 191 F. Supp. 3d at 1077.

### 9 **C. The Balance of the Equities Tips in Redapt's Favor**

10 Redapt asserts that the balance of the equities factor favors it because "Redapt seeks to  
 11 protect its proprietary business information, whereas Parker will suffer no harm or prejudice  
 12 from preserving the *status quo ante* [and] from the examination of his computer." Dkt. 4, at 16.  
 13 The Court agrees that there is no harm that will occur from preventing Parker from distributing  
 14 or possessing the CRM database or destroying evidence material to this matter in the brief period  
 15 covered by the TRO. *See also Henry Schein, Inc.*, 191 F. Supp. 3d at 1077 (Finding that no  
 16 undue hardship occurs where a party is enjoined from engaging in improper activities); *Navigant*  
 17 *Consulting, Inc.*, 2018 WL 3751983, at \*4 ("Navigant seeks to protect its proprietary business  
 18 information, whereas Defendants will suffer minimal prejudice from preserving the status quo." ).  
 19 "[T]he Ninth Circuit has often compressed this analysis into a single continuum where the  
 20 required showing of merit varies inversely with the showing of irreparable harm." *Amazon.com,*  
 21 *Inc. v. Moyer*, No. C19-1176 RSM, 2019 WL 5455724, at \*4 (W.D. Wash. Oct. 24, 2019) (citing  
 22 *Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 874 (9th Cir. 2000)).  
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**D. Public Interest**

Redapt argues that preventing theft of trade secrets is in the public interest. Dkt. 4, at 17. The Court agrees: “the public interest is served when defendant is asked to do no more than abide by trade laws and the obligations of contractual agreements signed with her employer. Public interest is also served by enabling the protection of trade secrets.” *Henry Schein, Inc.*, 191 F. Supp. 3d at 1078 (citing *Bank of Am., N.A. v. Lee*, No. CV 08–5546 CAS(JWJX), 2008 WL 4351348, at \*7 (C.D. Cal. Sept. 22, 2008)).

In sum, the Court finds that each of the TRO factors weighs in favor of granting a TRO preventing Parker from disclosing or using the CRM database.

Redapt also seeks to have Parker ordered to deliver his computer and devices to the Court or to Redapt’s counsel for imaging. In response to questioning at the *ex parte* hearing by Magistrate Judge J. Richard Creatura, Redapt’s counsel represented that he is unaware of authority supporting that such directives would be appropriate in a TRO. *See* Email from Mike Callan to Deputy Clerk Kelly Miller (June 11, 2020, at 3:01 p.m. P.S.T.) (on file with the Court). Indeed, courts have found to the contrary. In a published ruling, the Northern District of California refused to order that defendant provide “a ‘clone’ or ‘mirror image’ of data in [her] personal e-mail accounts, her personal iPad, iPhone, computers, other mobile devices, and any other computer storage drives,” finding that such was inappropriate in a TRO without first providing defendant “an opportunity to respond to [p]laintiff’s contentions.” *Henry Schein, Inc.*, 191 F. Supp. 3d at 1078. As the Court reasoned in that matter, Parker is already obligated “to avoid altering, damaging, or destroying any evidence, electronic or otherwise, that is related to this litigation” and may face penalties such as sanctions for doing so. *Id.* Therefore, the Court declines to order Parker to turn over devices at this juncture.

1 In addition, Redapt seeks to have third parties—namely former Redapt employees Matt  
2 O’Donnell, Brian O’Donnell, Brandon Gross, and Hannah de Regt—ordered to preserve all  
3 evidence pertaining to this matter. Redapt has provided the Court with no authority that a  
4 temporary restraining order may bind named persons who are not parties to the action. However,  
5 the applicable rule specifically provides that the TRO may apply to those who have actual notice  
6 by personal service or otherwise and who are a party’s officer, agent, servant, employee, or  
7 attorney or are acting in “active concert or participation with” a party. *See* Fed. R. Civ. P.  
8 65(d)(2). Therefore, this TRO is binding on any such person who has or may have access to the  
9 information, devices, or materials that are the subject of this order and who received actual  
10 notice of this Order.

11 To the extent that Redapt seeks to have an order requiring preservation of evidence, the  
12 Court further orders that Parker and any person described under Fed. R. Civ. P. 65(d) preserve  
13 documents, data, and other materials related to this case and not alter, destroy, or dispose of  
14 evidence or materials related to this case, in accordance with Fed. R. Civ. P. 26(a) and 37(e).  
15 *Accord Henry Schein, Inc.*, 191 F. Supp. 3d at 1078.

#### 16 **IV. No Bond Required**

17 Finally, the Court considers whether to require Redapt to pay a bond. *See* Fed. R. Civ. P.  
18 65(c). Generally, courts may grant a TRO “only if the movant gives security in an amount that  
19 the court considers proper to pay the costs and damages sustained by any party found to have  
20 been wrongfully . . . restrained.” Fed. R. Civ. P. 65(c). A district court “may dispense with the  
21 filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from  
22 enjoining his or her conduct.” *Navigant Consulting, Inc.*, 2018 WL 3751983, at \*4.  
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1 Here, enjoining Parker from disseminating information that he should not have does not  
2 cause a realistic likelihood of harm in the next 14 days, and therefore no bond is required at this  
3 time. This ruling is entered without prejudice, should Parker wish to address the requirement of  
4 a bond, once Parker has appeared and responded.

### 5 CONCLUSION

6 For the foregoing reasons and subject to the following revisions, the court GRANTS  
7 Redapt's motion for a TRO. *See* Dkt. 4.

8 (1) Parker shall not disclose or use Redapt's CRM database or any other  
9 confidential information and trade secrets in any way;

10 (2) Parker is ordered to preserve all evidence relevant to the allegations in the  
11 Complaint, wherever located, including, but not limited to, his mobile phone, text  
12 messages, social media messages, and email until further ordered. Parker shall  
13 preserve documents, data, and other materials related to this case and shall not alter,  
14 destroy, or dispose of materials related to this case, in accordance with Federal Rule  
15 of Civil Procedure 26(a) and 37(e).

16 (3) Pursuant to Federal Rule of Civil Procedure 65(d)(2), this Order is binding on  
17 those persons who receive actual notice of this Order, if those persons are an officer,  
18 agent, servant, employee, or attorney of Parker or if they are acting in active concert  
19 or participation with Parker.

20 (4) Parker shall file pleadings showing cause, if any he may have, why he should  
21 not be preliminarily enjoined from possessing, disclosing, or using Redapt's  
22 confidential information and trade secrets.

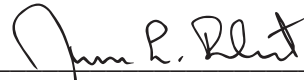
1 (5) The request for preliminary injunction is set for hearing on June 22, 2020.

2 Parker shall file a response on or before June 17, 2020. Redapt may file a reply in

3 support of the request for a preliminary injunction on or before June 19, 2020.

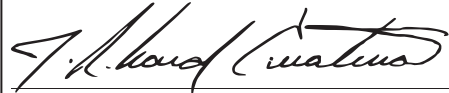
4 (6) Unless extended by the Court, this TRO expires fourteen days from entry.

5 Dated this 11th day of June, 2020.

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7 JAMES L. ROBART  
United States District Judge

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9 Recommended for Entry  
this 11th day of June, 2020.

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12 J. Richard Creatura  
United States Magistrate Judge